

108TH CONGRESS
1ST SESSION

H. R. 2754

AN ACT

Making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

\$5,000,000 for each causal event giving rise to a claim or claims” after “activities of the Bureau of Reclamation”.

TITLE III

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY SUPPLY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy supply activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed 12 passenger motor vehicles for replacement only, including two buses; \$691,534,000, to remain available until expended.

NON-DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental management site acceleration activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property

1 or any facility or for plant or facility acquisition, construc-
2 tion, or expansion, \$170,875,000, to remain available until
3 expended.

4 NON-DEFENSE ENVIRONMENTAL SERVICES

5 For Department of Energy expenses necessary for
6 non-defense environmental services activities conducted as
7 a result of nuclear energy research and development activi-
8 ties that indirectly support the accelerated cleanup and
9 closure mission at environmental management sites, as
10 well as new work scope transferred to the Environmental
11 Management program, including the purchase, construc-
12 tion, and acquisition of plant and capital equipment and
13 other necessary expenses, \$320,468,000, to remain avail-
14 able until expended.

15 URANIUM ENRICHMENT DECONTAMINATION AND 16 DECOMMISSIONING FUND

17 For necessary expenses in carrying out uranium en-
18 richment facility decontamination and decommissioning,
19 remedial actions, and other activities of title II of the
20 Atomic Energy Act of 1954 and title X, subtitle A, of the
21 Energy Policy Act of 1992, \$392,002,000, to be derived
22 from the Fund, to remain available until expended, of
23 which \$51,000,000 shall be available in accordance with
24 title X, subtitle A, of the Energy Policy Act of 1992.

SCIENCE

For Department of Energy expenses including the purchase, construction and acquisition of plant and capital equipment, and other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of not to exceed 15 passenger motor vehicles for replacement only, including not to exceed one ambulance, \$3,480,180,000, to remain available until expended.

NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, \$335,000,000, to remain available until expended and to be derived from the Nuclear Waste Fund: *Provided*, That of the funds made available in this Act, \$70,000,000 shall be used to initiate development of a rail line in the State of Nevada, connecting the existing national rail network with the repository site on the Nevada Test Site: *Provided further*, That none of the funds provided in this or any other appropriations Act may be used for the planning, design, or development of the rail cor-

1 ridors that pass near the Las Vegas Metropolitan Area,
2 specifically the Valley Modified Corridor and the Jean
3 Corridor, and variations thereof, as these corridors are de-
4 lineated in the Final Environmental Impact Statement for
5 a Geologic Repository for the Disposal of Spent Nuclear
6 Fuel and High-Level Radioactive Waste at Yucca Moun-
7 tain, Nye County, Nevada, dated February 2002: *Provided*
8 *further*, That \$65,000,000 of the \$70,000,000 made avail-
9 able in this Act for Nevada rail transportation shall be
10 available only if the Secretary designates rail as the pre-
11 ferred mode of transportation within Nevada and selects
12 a Nevada rail corridor within 60 days of enactment of this
13 Act and commences the necessary environmental and engi-
14 neering analysis to develop and issue a Record of Decision
15 for a specific rail alignment within the selected rail cor-
16 ridor by June 30, 2005: *Provided further*, That not to ex-
17 ceed \$2,500,000 shall be provided to the State of Nevada
18 solely for expenditures, other than salaries and expenses
19 of State employees, to conduct scientific oversight respon-
20 sibilities and participate in licensing activities pursuant to
21 the Nuclear Waste Policy Act of 1982 (Public Law 97–
22 425), as amended: *Provided further*, That not to exceed
23 \$6,500,000 shall be provided to affected units of local gov-
24 ernments, as defined in Public Law 97–425, to conduct
25 appropriate activities pursuant to the Act: *Provided fur-*

1 *ther*, That the distribution of funds to the State of Nevada
2 and affected units of local government shall be solely for
3 activities approved in advance by the Department of En-
4 ergy: *Provided further*, That the funds for the State of
5 Nevada shall be made available solely to the Nevada Divi-
6 sion of Emergency Management by direct payment and
7 to affected units of local government by direct payment:
8 *Provided further*, That within 90 days of the completion
9 of each Federal fiscal year, the Nevada Division of Emer-
10 gency Management, the Governor of the State of Nevada,
11 and each affected unit of local government receiving pay-
12 ments under this section shall provide certification to the
13 Department of Energy that all funds expended from such
14 payments have been expended for activities authorized by
15 Public Law 97–425 and this Act. Failure to provide such
16 certification shall cause such entity to be prohibited from
17 receiving any further Federal funding provided for similar
18 activities: *Provided further*, That none of the funds herein
19 appropriated may be: (1) used directly or indirectly to in-
20 fluence legislative action on any matter pending before
21 Congress or a State legislature or for lobbying activity as
22 provided in 18 U.S.C. 1913; (2) used for litigation ex-
23 penses; or (3) used to support multi-State efforts or other
24 coalition building activities: *Provided further*, That all pro-
25 ceeds and recoveries realized by the Secretary in carrying

1 out activities authorized by the Nuclear Waste Policy Act
2 of 1982, as amended, including but not limited to, any
3 proceeds from the sale of assets shall be available without
4 further appropriation and shall remain available until ex-
5 pended.

6 DEPARTMENTAL ADMINISTRATION

7 (INCLUDING TRANSFER OF FUNDS)

8 For salaries and expenses of the Department of En-
9 ergy necessary for departmental administration in car-
10 rying out the purposes of the Department of Energy Orga-
11 nization Act (42 U.S.C. 7101 et seq.), including the hire
12 of passenger motor vehicles and official reception and rep-
13 resentation expenses (not to exceed \$35,000),
14 \$224,329,000, to remain available until expended, plus
15 such additional amounts as necessary to cover increases
16 in the estimated amount of cost of work for others not-
17 withstanding the provisions of the Anti-Deficiency Act (31
18 U.S.C. 1511 et seq.): *Provided*, That such increases in cost
19 of work are offset by revenue increases of the same or
20 greater amount, to remain available until expended: *Pro-*
21 *vided further*, That moneys received by the Department
22 for miscellaneous revenues estimated to total
23 \$123,000,000 in fiscal year 2004 may be retained and
24 used for operating expenses within this account, and may
25 remain available until expended, as authorized by section

201 of Public Law 95–238, notwithstanding the provisions of 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during fiscal year 2004, and any related unappropriated receipt account balances remaining from prior years’ miscellaneous revenues, so as to result in a final fiscal year 2004 appropriation from the General Fund estimated at not more than \$101,329,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$39,462,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY

ADMINISTRATION

WEAPONS ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion;

1 one fixed wing aircraft for replacement only; and the pur-
2 chase of not to exceed six passenger motor vehicles, of
3 which four shall be for replacement only, including not to
4 exceed two buses; \$6,117,609,000, to remain available
5 until September 30, 2006.

6 DEFENSE NUCLEAR NONPROLIFERATION

7 For Department of Energy expenses, including the
8 purchase, construction and acquisition of plant and capital
9 equipment and other incidental expenses necessary for
10 atomic energy defense, defense nuclear nonproliferation
11 activities, in carrying out the purposes of the Department
12 of Energy Organization Act (42 U.S.C. 7101 et seq.), in-
13 cluding the acquisition or condemnation of any real prop-
14 erty or any facility or for plant or facility acquisition, con-
15 struction, or expansion, \$1,280,195,000, to remain avail-
16 able until September 30, 2006.

17 NAVAL REACTORS

18 For Department of Energy expenses necessary for
19 naval reactors activities to carry out the Department of
20 Energy Organization Act (42 U.S.C. 7101 et seq.), includ-
21 ing the acquisition (by purchase, condemnation, construc-
22 tion, or otherwise) of real property, plant, and capital
23 equipment, facilities, and facility expansion, and the pur-
24 chase of not to exceed one bus; \$768,400,000, to remain
25 available until expended.

OFFICE OF THE ADMINISTRATOR

For necessary expenses of the Office of the Administrator in the National Nuclear Security Administration, including official reception and representation expenses (not to exceed \$12,000), \$341,980,000, to remain available until September 30, 2006.

ENVIRONMENTAL AND OTHER DEFENSE

ACTIVITIES

DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense site acceleration completion activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; \$5,758,278,000, to remain available until expended.

DEFENSE ENVIRONMENTAL SERVICES

For Department of Energy expenses necessary for defense-related environmental services activities that indirectly support the accelerated cleanup and closure mission at environmental management sites, including the purchase, construction, and acquisition of plant and capital

1 equipment and other necessary expenses, and the purchase
2 of not to exceed one ambulance for replacement only,
3 \$990,179,000, to remain available until expended.

4 OTHER DEFENSE ACTIVITIES

5 For Department of Energy expenses, including the
6 purchase, construction, and acquisition of plant and cap-
7 ital equipment and other expenses necessary for atomic
8 energy defense, other defense activities, in carrying out the
9 purposes of the Department of Energy Organization Act
10 (42 U.S.C. 7101 et seq.), including the acquisition or con-
11 demnation of any real property or any facility or for plant
12 or facility acquisition, construction, or expansion,
13 \$666,516,000, to remain available until expended.

14 DEFENSE NUCLEAR WASTE DISPOSAL

15 For nuclear waste disposal activities to carry out the
16 purposes of Public Law 97-425, as amended, including
17 the acquisition of real property or facility construction or
18 expansion, \$430,000,000, to remain available until ex-
19 pended.

20 CERRO GRANDE FIRE ACTIVITIES

21 (RESCISSION)

22 From unobligated balances under this heading,
23 \$75,000,000 are cancelled.

1 POWER MARKETING ADMINISTRATIONS

2 BONNEVILLE POWER ADMINISTRATION FUND

3 Expenditures from the Bonneville Power Administra-
4 tion Fund, established pursuant to Public Law 93–454,
5 are approved for official reception and representation ex-
6 penses in an amount not to exceed \$1,500. During fiscal
7 year 2004, no new direct loan obligations may be made.

8 OPERATION AND MAINTENANCE, SOUTHEASTERN POWER
9 ADMINISTRATION

10 For necessary expenses of operation and maintenance
11 of power transmission facilities and of marketing electric
12 power and energy, including transmission wheeling and
13 ancillary services, pursuant to the provisions of section 5
14 of the Flood Control Act of 1944 (16 U.S.C. 825s), as
15 applied to the southeastern power area, \$5,100,000, to re-
16 main available until expended; in addition, notwith-
17 standing the provisions of 31 U.S.C. 3302, up to
18 \$19,000,000 collected by the Southeastern Power Admin-
19 istration pursuant to the Flood Control Act to recover pur-
20 chase power and wheeling expenses shall be credited to
21 this account as offsetting collections, to remain available
22 until expended for the sole purpose of making purchase
23 power and wheeling expenditures.

1 OPERATION AND MAINTENANCE, SOUTHWESTERN

2 POWER ADMINISTRATION

3 For necessary expenses of operation and maintenance
4 of power transmission facilities and of marketing electric
5 power and energy, for construction and acquisition of
6 transmission lines, substations and appurtenant facilities,
7 and for administrative expenses, including official recep-
8 tion and representation expenses in an amount not to ex-
9 ceed \$1,500 in carrying out the provisions of section 5
10 of the Flood Control Act of 1944 (16 U.S.C. 825s), as
11 applied to the southwestern power area, \$28,600,000, to
12 remain available until expended: *Provided*, That, notwith-
13 standing the provisions of 31 U.S.C. 3302, up to
14 \$1,512,000 collected by the Southwestern Power Adminis-
15 tration pursuant to the Flood Control Act to recover pur-
16 chase power and wheeling expenses shall be credited to
17 this account as offsetting collections, to remain available
18 until expended for the sole purpose of making purchase
19 power and wheeling expenditures; in addition, notwith-
20 standing 31 U.S.C. 3302, beginning in fiscal year 2004
21 and thereafter, such funds as are received by the South-
22 western Power Administration from any State, munici-
23 pality, corporation, association, firm, district, or individual
24 as advance payment for work that is associated with
25 Southwestern's transmission facilities, consistent with

1 that authorized in section 5 of the Flood Control Act, shall
2 be credited to this account and be available until ex-
3 pended.

4 CONSTRUCTION, REHABILITATION, OPERATION AND
5 MAINTENANCE, WESTERN AREA POWER ADMINIS-
6 TRATION

7 For carrying out the functions authorized by title III,
8 section 302(a)(1)(E) of the Act of August 4, 1977 (42
9 U.S.C. 7152), and other related activities including con-
10 servation and renewable resources programs as author-
11 ized, including official reception and representation ex-
12 penses in an amount not to exceed \$1,500, \$171,000,000,
13 to remain available until expended, of which \$167,236,000
14 shall be derived from the Department of the Interior Rec-
15 lamation Fund: *Provided*, That up to \$166,000,000 col-
16 lected by the Western Area Power Administration pursu-
17 ant to the Flood Control Act of 1944 and the Reclamation
18 Project Act of 1939 to recover purchase power and wheel-
19 ing expenses shall be credited to this account as offsetting
20 collections, to remain available until expended for the sole
21 purpose of making purchase power and wheeling expendi-
22 tures.

FALCON AND AMISTAD OPERATING AND MAINTENANCE
FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, \$2,640,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 423 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

FEDERAL ENERGY REGULATORY COMMISSION
SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses (not to exceed \$3,000), \$192,000,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, not to exceed \$192,000,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2004 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the General Fund shall be reduced as reve-

nues are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the General Fund estimated at not more than \$0.

GENERAL PROVISIONS

DEPARTMENT OF ENERGY

SEC. 301. (a) Notwithstanding any other provision of law, including section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(3)), none of the funds in this or any other appropriations Act for fiscal year 2004 or any previous fiscal year may be used to make payments for any management and operating contract of the Department of Energy unless that contract was awarded using competitive procedures within the past fifty fiscal years or unless the Secretary of Energy, not later than sixty days after the date of enactment of this Act, publishes in the Federal Register and submits to the Committees on Appropriations of the House of Representatives and the Senate a notification of intent to use competitive procedures for the procurement of each management and operating contract when the current term of each such contract expires.

(b) The Secretary may not impose any conditions on the competition of a management and operating contract that is funded under this or any other appropriations Act that may have the effect of biasing the competition in

1 favor of the incumbent contractor or otherwise providing
2 for anything less than full and open competition of such
3 contracts.

4 (c) For purposes of this section, the term “manage-
5 ment and operating contract” means a contract for the
6 management and operation of a Department of Energy
7 laboratory, facility, site, or plant as used in subpart
8 17.601 of the Federal Acquisition Regulation.

9 (d) For purposes of this section, the terms “competi-
10 tive procedures” and “full and open competition” have the
11 meanings provided in section 4 of the Office of Federal
12 Procurement Policy Act (41 U.S.C. 403).

13 (e) The provisions of subsection (a) in this section
14 apply to contracts awarded for a term of one year or more,
15 not to interim extensions of less than one year used to
16 extend contract performance until a long-term contract is
17 placed or to provide continuity of service between con-
18 tracts.

19 SEC. 302. None of the funds appropriated by this Act
20 may be used to—

21 (1) develop or implement a workforce restruc-
22 turing plan that covers employees of the Department
23 of Energy; or

24 (2) provide enhanced severance payments or
25 other benefits for employees of the Department of

1 Energy, under section 3161 of the National Defense
2 Authorization Act for Fiscal Year 1993 (Public Law
3 102–484; 42 U.S.C. 7274h).

4 SEC. 303. None of the funds appropriated by this Act
5 may be used to augment the \$15,000,000 made available
6 for obligation by this Act for severance payments and
7 other benefits and community assistance grants under sec-
8 tion 3161 of the National Defense Authorization Act for
9 Fiscal Year 1993 (Public Law 102–484; 42 U.S.C.
10 7274h) unless the Department of Energy submits a re-
11 programming request subject to approval by the appro-
12 priate congressional committees.

13 SEC. 304. None of the funds appropriated by this Act
14 may be used to prepare or initiate Requests For Proposals
15 (RFPs) for a program if the program has not been funded
16 by Congress.

17 (TRANSFERS OF UNEXPENDED BALANCES)

18 SEC. 305. The unexpended balances of prior appro-
19 priations provided for activities in this Act may be trans-
20 ferred to appropriation accounts for such activities estab-
21 lished pursuant to this title. Balances so transferred may
22 be merged with funds in the applicable established ac-
23 counts and thereafter may be accounted for as one fund
24 for the same time period as originally enacted.

25 SEC. 306. None of the funds in this or any other Act
26 for the Administrator of the Bonneville Power Administra-

tion may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 307. When the Department of Energy makes a user facility available to universities and other potential users, or seeks input from universities and other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term “user facility” includes, but is not limited to: (1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2)); (2) a National Nuclear Security Administration Defense Programs Technology Deployment Cen-

ter/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

SEC. 308. The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: *Provided*, That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: *Provided further*, That for purposes of this section, the term “covered nuclear weapons facility” means the following:

- (1) the Kansas City Plant, Kansas City, Missouri;
- (2) the Y-12 Plant, Oak Ridge, Tennessee;
- (3) the Pantex Plant, Amarillo, Texas;
- (4) the Savannah River Plant, South Carolina;
- and
- (5) the Nevada Test Site.